

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

Docket No. EPCRA-08-2003-0001

IN THE MATTER OF:)	
)	
Neoplan-USA-Corporation)	FINAL ORDER
700 Gottlob Auwaerter Dr)	
Lamar, CO 81052-2298)	
)	
Respondent.)	
_____)	

Pursuant to 40 C.F.R. § 22.18(b)(3), the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

Date: March 24, 2004

By: SIGNED
Alfred C. Smith
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
BEFORE THE ADMINISTRATOR**

In the Matter of:)	
)	
Neoplan-USA-Corporation)	
700 Gottlob Auwaerter Dr)	
Lamar, CO 81052-2298)	Docket No. EPCRA-08-2003-0001
)	
Respondent.)	
_____)	

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency, Region 8 ("EPA"), and Respondent, Neoplan-USA-Corporation ("Neoplan" or "Respondent"), by their undersigned representatives, hereby consent and agree as follows:

1. EPA filed the Complaint and Notice of Opportunity for Hearing ("Complaint") in this matter on September 23, 2003, alleging certain violations of Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.30 and 372.85. Those provisions require owners and operators of "covered" facilities to submit a toxic chemical release form, EPA's "Form R," for each toxic chemical listed under 40 C.F.R. § 372.65 that was processed or otherwise used during the preceding calendar year in quantities exceeding the regulatory threshold amounts for reporting. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, the Com-

plaint proposed a civil penalty for the violations alleged therein of \$284,075.

2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.

3. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or this Consent Agreement and Final Order.

4. This Consent Agreement, upon incorporation into a final order, applies to and is binding on EPA and upon Respondent and Respondent's officers, directors, employees, agents, successors and assigns, including, but not limited to, subsequent purchasers.

5. Respondent hereby certifies to EPA that Respondent is now in compliance with all applicable provisions of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.30 and 372.85, for Respondent's bus manufacturing facility in Lamar, Colorado ("Facility"). Specifically, Respondent has demonstrated to the satisfaction of EPA that Respondent has achieved compliance with the requirements that formed the basis of all of the counts, I through XIV, cited in the Complaint, and for the additional alleged violations cited below in Paragraph 7, below. For Counts III, IV, V, XII, XIII and XIV cited in the Complaint, and for the violations alleged in Paragraph 7 below, Respondent has submitted

the required Form R's, or revised Form R's where applicable, for such alleged violations to the EPA Administrator and the State of Colorado, as provided under 40 C.F.R. Part 372.

6.a. Based on information submitted by Respondent after the Complaint was filed, showing that quantities of the respective toxic chemicals were not otherwise used or processed in amounts over the regulatory threshold, EPA hereby withdraws Counts I, II, VI, VII, VIII, IX, X and XI, as alleged in the Complaint.

b. EPA acknowledges that Respondent has filed a Request for Withdrawal and Revised Form R for Styrene (2002) to withdraw the previously filed Form R, based on Respondent's revised calculations showing Styrene "otherwise used" at the Facility in 2002 as being under the regulatory threshold amount; and that Respondent has submitted revised Form R's for Styrene (2000), Xylene (2000), Toluene (2001, 2002), and n-Hexane (2001, 2002), as "otherwise used" at the Facility; and further acknowledges that such Form R withdrawals and revisions have been properly filed and that, based on information currently in the possession of EPA, Respondent has acted in good faith and in accordance with the law in submitting such withdrawals and revisions.

7. Based on information obtained after the Complaint was filed, EPA further alleges the following:

a. Zinc (fume or dust), Chemical Abstract Service Registry number 7440-66-6 ("zinc dust"), is a toxic chemical listed

under 40 C.F.R. § 372.65, for which reporting is required pursuant to EPCRA Section 313(b) and 40 C.F.R. § 372.30 and for which, pursuant to 40 C.F.R. § 372.25(b), the applicable reporting threshold for zinc dust "processed" at a facility in a calendar year is 25,000 pounds per year.

b. Zinc dust was processed at Respondent's Facility during the years 1999, 2000, 2001 and 2002 in excess of the applicable threshold amount; and Respondent failed to submit the relevant Form R to the Administrator and to the State of Colorado for each of those years.

c. Ethylene glycol, Chemical Abstract Service Registry number 107-21-1, is a toxic chemical listed under 40 C.F.R. § 372.65 for which reporting is required pursuant to EPCRA Section 313(b) and 40 C.F.R. § 372.30 and for which, pursuant to 40 C.F.R. § 372.25(a), the applicable reporting threshold for ethylene glycol "processed" at a facility in a calendar year is 25,000 pounds per year.

d. Ethylene glycol was "processed" at Respondent's Facility during the years 1998, 1999, 2000 and 2001 in excess of the applicable threshold amount and Respondent failed to submit a Form R to the Administrator and to the State of Colorado on or before July 1 of the respective previous years for the ethylene glycol it processed at the Facility during calendar years 1998, 1999, 2000 and 2001.

e. Respondent's actions, described above, constitute eight violations of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30 in addition to those violations alleged in the Complaint.

8. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, in consideration of the nature of the violations alleged, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of twenty-two thousand dollars (\$22,000.00).

9. Respondent consents and agrees to pay the civil penalty cited in the foregoing paragraph and to perform the SEP described herein. The civil penalty shall be paid as follows:

a. Respondent consents and agrees that it shall pay the civil penalty in the amount of \$22,000.00. The penalty payment of \$22,000 shall be due thirty (30) days after issuance of the Final Order in this matter by the Regional Presiding Officer. Respondent shall make this payment by remitting a cashier's or certified check for the specified amount, payable to "Treasurer, United States of America," to:

Mellon Bank
EPA Region 8
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA. 15251

Respondent's check shall reference the name and address of Respondent's Facility and the EPA docket number of this action. A copy of the check shall be sent simultaneously to:

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Cheryl Turcotte
Technical Enforcement Program (8ENF-T)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

b. In the event payment in full is not received by the due date specified above, Respondent shall pay all interest, handling and per annum penalties as follows: Interest shall accrue from the date of the Final Order in this matter, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. In addition, a handling charge of fifteen dollars (\$15.00) shall be assessed on the 31st day from the date of the Final Order in this matter, and each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) days of

the due date. Payments are first applied to accrued interest, penalty and/or handling charge; the balance shall then be applied to the outstanding principal amount. Any such penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§ 102.13(d) and (e). Additional charges may be sought to cover the costs of debt collection, including processing and handling costs and attorneys fees.

c. Respondent agrees that the penalty specified above shall never be claimed as a Federal or other tax deduction or credit.

10. Respondent shall perform the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental or public health protection and improvements: In accordance with the schedule set forth in the Scope of Work, Respondent shall perform specified actions toward achieving the standard for Maximum Achievable Control Technology ("MACT") established pursuant to Section 112 of the Clean Air Act, 42 U.S.C. § 7412, and applicable to the Facility pursuant to the final rule on "National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products," 40 C.F.R. Part 63, Subpart Mmmm (69 Fed. Reg. 129-192, January 2, 2004) (the "final MACT rule".) The SEP is described in the scope of work

(hereinafter, the "Scope of Work") attached hereto as Appendix A.

11. Subject to Paragraph 15 (Stipulated Penalties), below, and, in accordance with the specifications set forth in the Scope of Work (Appendix A, hereto), the total expenditure for the SEP ("Cost of the SEP") shall not be less than sixty-four thousand four hundred twelve and 50/100 dollars (\$64,412.50.) Allowable Costs for the SEP shall be calculated as set forth herein and in the Scope of Work.

12. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP or any portion thereof by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP, or any portion thereof, by agreement, grant or as injunctive relief in this or any other case or matter or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP, or any portion thereof.

13. Whether Respondent has complied with the terms of this Consent Agreement and Final Order through timely completion of the SEP, including achievement of MACT standards, as herein required, shall be the sole determination of EPA. Within sixty (60) days after the end of the Initial Compliance Period, i.e., January 2, 2006, as defined in the Scope of Work attached hereto,

EPA will review Neoplan's performance of the SEP including but not limited to Neoplan's success in achieving, and in demonstrating achievement of, the MACT standard. Utilization of the methodology for measuring achievement of the MACT standard described in the Scope of Work, shall not necessarily apply to any future determination by EPA of Respondent's compliance with the final MACT rule or any other regulation. Accordingly, EPA reserves all rights to impose, and compliance with this Consent Agreement shall not constitute a basis for challenging EPA's imposition of, a different methodology, basis and/or criteria for determining the Facility's compliance with the requirements of the final MACT rule, in accordance with Agency policy and law, after the regulatory compliance date for the MACT standard, January 2, 2007.

14.a. Following receipt of the SEP Interim Progress Report, the SEP Completion Report and the Initial Compliance Period Report described in the Scope of Work, EPA will do one of the following: (i) accept the SEP Interim Progress Report, the SEP Completion Report and/or the Initial Compliance Period Report, respectively, and notify Respondent in writing; (ii) reject such Report(s), notify the Respondent, in writing, of deficiencies in such rejected Report(s) and, if no written objection is submitted by Respondent pursuant to Paragraph 14.b., below, Respondent shall have an additional thirty (30) days after receipt of EPA's

notice in which to correct any deficiencies; after which time period, EPA will notify Respondent in writing if such correction is accepted or rejected; or (iii) reject such Reports as unacceptable and notify Respondent in writing.

b. If EPA elects to exercise option (ii) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have thirty (30) days from the receipt by the EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. No later than fifteen (15) days after receipt of EPA's final binding decision, Respondent agrees to, and shall, comply with any requirements imposed by EPA as a result of any such deficiency or failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 15, below.

15. Stipulated Penalties for Failure to Complete SEP/Failure to Spend Agreed-on Amount.

a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in the Scope of Work, and/or to the extent that the actual expenditures for the SEP do not conform with the allowable and maximum costs and the total required expenditure of the SEP described herein and in the Scope of Work, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(1) Notwithstanding whether Respondent achieves or does not achieve the MACT standard, the following shall apply:

(i) If Respondent elects not to implement any portion of Component II of the SEP or elects to implement only a portion of Component II, Respondent shall notify EPA in the SEP Interim Progress Report of its intent to exclude all or part of Component II of the SEP and the estimated Allowable Cost of the portion of Component II which it elects to perform. Respondent shall pay a stipulated penalty to the United States within fifteen (15) days after the date of receipt by Respondent of EPA's notice under Paragraph 14.a. concerning the SEP Interim Progress Report, or, if Respondent has invoked the procedures thereunder, within fifteen (15) days of EPA's final, binding decision under Paragraph 14.b. concerning the SEP Interim Progress Report. The stipulated penalty shall be in the amount of twenty-seven thousand four hundred twelve and 50/100 dollars (\$27,412.50)

minus the estimated Allowable Cost of implementing Component II of the SEP, as submitted by Respondent in the Interim Progress Report. If the amount estimated is equal to or greater than \$26,041.88 (95% x \$27,412.50), Respondent shall not pay a stipulated penalty under this Subparagraph 15.a(1)(i).

(ii) If Respondent's actual expenditures of Allowable Costs for SEP Component II, as documented in the SEP Completion Report and as credited pursuant to this Paragraph and the Scope of Work, are less than the amount estimated in the Interim Progress Report, Respondent shall pay an additional stipulated penalty to the United States. Respondent shall pay this additional stipulated penalty to the United States within fifteen (15) days after the date of receipt by Respondent of EPA's notice under Paragraph 14.a. concerning the SEP Completion Report, or, if Respondent has invoked the procedures thereunder, within fifteen (15) days of EPA's final, binding decision under Paragraph 14.b. concerning the SEP Completion Report. This additional stipulated penalty shall be in the amount of the difference between the above estimated amount and the actual amount spent. If such actual expenditures are equal to or greater than the amount estimated, as described in Paragraph 15.a(1)(i), above, Respondent shall not be liable for any stipulated penalty under this Subparagraph 15.a(1)(ii).

(iii) If Respondent spent less than 95% of the amount of money required to be spent for Component I of the SEP, i.e., less than \$35,150 ($95\% \times \$37,000$), Respondent shall pay an additional stipulated penalty to the United States. Respondent shall pay this additional stipulated penalty to the United States within fifteen (15) days after the date of receipt by Respondent of EPA's notice under Paragraph 14.a. concerning the SEP Completion Report, or, if Respondent has invoked the procedures thereunder, within fifteen (15) days of EPA's final, binding decision under Paragraph 14.b. concerning the SEP Completion Report. This additional stipulated penalty shall be in the amount of thirty-seven thousand and no/100 dollars (\$37,000) minus the amount of Allowable Costs spent by Respondent on Component I of the SEP, as credited pursuant to this Paragraph and the Scope of Work. If such Allowable Costs spent by Respondent on Component I are equal to or greater than \$35,150 ($95\% \times \$37,000$), Respondent shall not be liable for any stipulated penalty under this Subparagraph 15.a(1)(iii).

(iv) Notwithstanding Respondent's achievement of the MACT standard as determined at the end of the Initial Compliance Period, Respondent shall submit itemized costs in the SEP Completion Report to allow EPA to determine as of the Compliance Date whether Respondent spent the amount of money required to be

spent for the SEP, and to seek such stipulated penalties, in accordance with this Paragraph 15.

(2) In addition, if Respondent does not achieve the MACT standard through implementation of the SEP, either through implementing Component I or a combination of Components I and II of the SEP by the Compliance Date as demonstrated at the end of the Initial Compliance Period, but Respondent has achieved some (greater than zero) reduction in HAP use and emissions, the following shall apply: Respondent shall pay an additional stipulated penalty amount to the United States equal to the lesser of (a) an amount inversely proportionate to the amount of annual reduction in HAP use and emissions achieved by the SEP (as described in the following sentence); or (b) sixty four thousand four hundred twelve and 50/100 dollars (\$64,412.50) minus any stipulated penalties previously paid pursuant to Subparagraphs 15.a(1)(i), (ii), and/or (iii), above, less one-half of the Allowable Costs expended by Respondent in performing the P2 Study. The stipulated penalty amount, set forth in Paragraph 15.a(2)(a), above, shall be calculated as ("x") sixty-four thousand four hundred twelve and 50/100 dollars (\$64,412.50) minus the amount of any stipulated penalties previously paid pursuant to Subparagraphs 15.a(1)(i), (ii) and/or (iii), minus ("y") the product of the percentage (%) of HAP reduction achieved and the Allowable Costs actually expended on the SEP. The

maximum Allowable Costs expended for the purposes of this calculation shall be \$64,412.50. If no ("zero", = 0.00%) HAP reduction is achieved, the value for "y" for purposes of the above calculations shall equal zero (0, or \$0.00). The "percentage of HAP reduction achieved," for purposes of this Paragraph, shall be calculated as: ("xx") "the Current HAP Use at the Facility, agreed by Respondent and EPA to be 4.2 pounds per gallon solids, minus ("yy") the End-of-SEP HAP Use as of the time of the Compliance Date as demonstrated at the end of the Initial Compliance Period (as calculated and certified pursuant to this Consent Agreement)", divided by ("xx") "the Current HAP Use at the Facility minus ("zz") the applicable regulatory MACT standard (agreed by EPA and Respondent to be 2.6 pounds)," expressed as a percentage. Example calculations for Paragraph 15.a(2)(a) above are provided in the Scope of Work.

(3) Notwithstanding the above, if Respondent has not made good faith and timely efforts to complete at least Component I of the SEP; or does not certify, with complete supporting documentation the amount of funds expended on the SEP, Respondent shall pay a stipulated penalty in the amount of \$64,412.50, minus the amount of any stipulated penalties previously paid under Paragraph 15.a(1) and (2), above.

(4) Respondent shall pay the additional stipulated penalties due under Paragraph 15.a(2), above, to the United

States within fifteen (15) days after the date of receipt by Respondent of EPA's notice under Paragraph 14.a. concerning the Initial Compliance Period Report, or, if Respondent has invoked the procedures thereunder, within fifteen (15) days of EPA's final, binding decision under Paragraph 14.b. concerning the Initial Compliance Period Report.

(5) For failure to submit the SEP Completion Report and/or the SEP Initial Compliance Period Report required by the Scope of Work or failure to adequately address deficiencies in the reports identified by EPA pursuant to Paragraph 14, above, Respondent shall pay a stipulated penalty in the amount of \$500.00 for each day after the report was originally due until the report is submitted.

(6) For failure to submit any other report required by this Consent Agreement, Respondent shall pay a stipulated penalty in the amount of \$200.00 for each day after the report was originally due until the report is submitted.

b. Stipulated penalties for Paragraphs 15.a(5) and (6), above, shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

c. Unless otherwise specified herein, Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment

shall be in accordance with the provisions of Paragraph 9, above. For any stipulated penalty not paid in full by the due date specified above, interest and late charges shall be paid as provided in Paragraph 9, above.

d. Failure to implement or complete any portion of the SEP or to spend the required costs for the SEP on the basis of existing or "then-existing" contract requirements shall not constitute a defense to the assessment of any stipulated penalty under this Consent Agreement.

16. Respondent hereby agrees that any funds expended in the performance of the SEP, or any Stipulated Penalties paid, shall never be claimed as a federal or other tax deduction or credit. In addition, Respondent hereby agrees that, within thirty (30) days of the date it submits its Federal tax reports for the calendar year of the Compliance Date, it will submit to EPA certification that any funds expended in the performance of the SEP or for payment of any civil or stipulated penalties hereunder have not been deducted from, or claimed as a credit against, Federal taxes.

17. Respondent agrees that EPA may inspect Respondent's Facility at any time in order to confirm that the SEP is being implemented and is operating properly and in conformity with the representations made herein.

18. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and Respondent shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information. In all documents or reports, including, without limitation, the SEP Interim Progress Report, the SEP Completion Report and the Interim Compliance Period Report, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all its appendices and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

19. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of EPCRA."

20. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with EPCRA and its implementing regulations, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent, if any, in connection with the SEP under the terms of this Agreement.

21. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the Consent Agreement and Final Order and may result in referral of the matter to the United States Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.

22. Nothing in this Consent Agreement shall be construed as a waiver by EPA or other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted by reason of Respondent's failure to comply with the terms of this Consent Agreement. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

23. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and to legally bind Respondent to all terms and conditions of this Consent Agreement.

24. The Parties agree to submit this Consent Agreement to

the Regional Judicial Officer of EPA, Region VIII, with a request that it be incorporated into a Final Order.

25. This Consent Agreement includes Appendices A and B, attached hereto and incorporated by reference under the terms of this Consent Agreement, and contains all terms of the settlement agreed to by the parties. In the event of any conflict between this Consent Agreement and Appendices A or B, this Consent Agreement shall control.

26. The Parties agree that nothing in this Consent Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Agreement.

27. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Final Order.

28. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint and in Paragraphs 5, 6 and 7, above. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

In the Matter of: Neoplan-USA-Corporation
EPA Docket No. EPCRA-08-2003-0001

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII**

Date: _____

By: _____
Martin Hestmark, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: _____

By: _____
David J. Janik
Senior Enforcement Attorney
Administrative Litigation
Legal Enforcement Program

Date: _____

By: _____
James M. Stearns
Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8

Neoplan-USA-Corporation

Date: _____

By: _____
Name:

Title:

In the Matter of: Neoplan-USA-Corporation
EPA Docket No. EPCRA-08-2003-0001

Appendix A - Scope of Work for the SEP

1. Within thirty (30) days of receiving a copy of the final, signed Consent Agreement and Final Order in this matter, Respondent shall initiate specified actions toward achieving the standard for the final MACT rule as described in paragraph 10 of the Consent Agreement. Respondent acknowledges that its Facility is subject to the final MACT rule. The final MACT rule implements Section 112(d) of the CAA by requiring certain sources of hazardous air pollutants (HAPs) to meet HAP emission standards reflecting MACT.

2.a. The SEP includes the implementation of either one or a combination of two components intended to enable Respondent to achieve compliance with the MACT standard two years in advance of the applicable regulatory compliance deadline. Pursuant to the January 2, 2004, final MACT rule, 40 C.F.R. Part 63, Subpart MMMM, (69 Fed. Reg. 135, January 2, 2004)), compliance is required no later than three years after publication of final rule or January 2, 2007, provided however that affected sources must demonstrate compliance with the MACT standard at the end of an initial compliance period (defined as the 12-month period beginning on the compliance date) when the affected sources will have accumulated the necessary records to document the rolling

12-month organic HAP emission rate. Component I includes (1) performance of a Pollution Prevention Assessment ("P2 Study") to assess the feasibility of reducing use (and thus emissions) of hazardous air pollutants ("HAPs") at the Facility; (2) implementation of the recommendations and findings of the P2 Study to the maximum degree feasible (and to the extent permitted by then-existing contract requirements), including replacement and/or substitution of materials currently in use at the Facility that contain HAPs with non- or less toxic materials ("HAP substitution"); (3) contractor-provided training of Respondent's employees in the handling, application and substitution of new (HAP-substitution) materials and in the use of new "HAP reduction" equipment installed pursuant to implementing Component II of this SEP; and (4) implementation of the Environmental Management Information System ("EMIS"). Component II of this SEP includes (Part A) installation of new "HAP reduction" equipment, e.g., paint-application and other equipment intended to reduce the use of HAP-containing materials through more efficient application and use; and (Part B) installation of air pollution control equipment, including concentrators, thermal oxidizers and catalytic oxidizers.

b. Achievement of the MACT standard, for purposes of this SEP and Consent Agreement only, shall be measured by determining

the level of HAP use and emissions at the Facility as of the completion of the SEP (at the Compliance Date, January 2, 2005) (defined as the "End-of-SEP HAP Use"). Notwithstanding the foregoing, for purposes of this SEP and Consent Agreement, Respondent must demonstrate compliance with the MACT standard at the end of an initial compliance period defined as the 12-month period beginning on the Compliance Date and ending January 2, 2006 (the "Initial Compliance Period"). Respondent hereby certifies, and EPA acknowledges for purposes of this Consent Agreement and SEP only, that the Current HAP Use at the Facility, as measured by "paint use" data for the total of all HAPs used and emitted during the 4-month period from September 2003 to December 2003 is 4.2 pounds per gallon of coating solids used, calculated as set forth in the HAPs Calculations attached hereto as Appendix B. The applicable regulatory standard, pursuant to the final MACT rule, is 2.6 pounds of HAPs emissions per gallon of coating solids used per each 12-month compliance period.

c. Respondent shall complete the P2 Study within sixty (60) days after receipt of the Final Order in this matter. Respondent shall achieve the MACT standard, through performance of SEP Components I and II, as necessary, by no later than one year after publication in the Federal Register of the final applicable MACT regulation or January 2, 2005 (the "Compliance Date"). By

no later than the end of the Initial Compliance Period, January 2, 2006, Respondent shall have accumulated the necessary records to document the rolling 12-month organic HAP emission rate for the facility necessary to demonstrate compliance with the MACT standard; and by no later than that date, Respondent shall demonstrate compliance with the MACT standard. Regardless of whether MACT is achieved or not, and except the P2 Study described above, Respondent shall complete all other required activities described for the SEP under this Consent Agreement, including implementation of the P2 Study, employee training, implementation of the EMIS, and the purchase, installation and operation of all Component II equipment, if any, by no later than six months after the Compliance Date, or July 2, 2005.

3. Respondent anticipates that, as a result of the SEP, and to the extent permitted by then-existing contract requirements, the Facility will use new materials (including products, coatings, thinners, additives and reagents) in the new systems constituting the SEP as a substitute for HAP-containing materials currently used. In no event, however, shall any substitute material be used in connection with the SEP that results in any total increase in HAPs released under Respondent's air permit at the Facility.

4. The maximum Allowable Cost of the P2 Study (contractor

costs only) shall be \$30,000; the maximum Allowable Cost of employee training (cost of the contract for the individual or company to perform the training) shall be \$3,500; the maximum Allowable Cost of implementation of the EMIS shall be \$3,500; and the maximum Allowable Cost of any new equipment installed pursuant to Component II, if any, shall be \$27,412.50. No credit for Allowable Costs shall be granted for employee expenses (i.e., "lost time", etc.). Allowable Costs of the P2 Study and the employee training shall be limited to only those activities carried out in performance of this SEP. Allowable Costs of any new equipment installed for the purpose of more efficiently using and applying new HAP-substitution materials (Component II, Part A), or any new air pollution control equipment installed (Component II, Part B), shall be limited to capital costs excluding any interest or other financing expenses. Subject to Paragraph 15 of the Consent Agreement, Respondent's expenditures for all elements of SEP Component I and for any pollution prevention equipment under SEP Component II, Part A, shall be credited on a dollar-per-dollar basis (= 100% of costs) toward the Cost of the SEP, provided that expenditures for the EMIS as part of Component I shall be credited on an eighty-cents-per-dollar basis (=80% of costs) toward the Cost of the SEP. The expenditures for any new air pollution control equipment under

Component II, Part B, shall be credited on an eighty-cents-per-dollar basis (= 80% of costs) toward the Cost of the SEP.

5. SEP Reports. a. Within forty-five (45) days of completion of the P2 Study, Respondent shall submit to EPA for approval a SEP Interim Progress Report. The SEP Interim Progress Report shall contain a description of the P2 Study and its findings and recommendations; an itemized statement of all SEP Costs expended to date; and a description of the next steps Respondent plans to take to implement the SEP, including, to the extent known, what HAP-containing materials will be replaced or reduced in use; what employee training will be implemented; and what equipment will be installed, if any, to improve the efficiency of HAP-containing product and reagent use and application or to otherwise control HAP air emissions. The Interim Progress Report shall include written notice of Respondent's election not to implement all or a portion of Component II of the SEP, and a description of the equipment Respondents intends to install and their estimated costs in accordance with Paragraph 15 of this Consent Agreement.

b. SEP Completion Report. Within thirty (30) days of the Compliance Date, January 2, 2005, Respondent shall submit to EPA for approval a SEP Completion Report. The SEP Completion Report shall contain the following information: (i) A detailed

description of the SEP as implemented, including all HAP-substituted materials adopted for use (MSDSs for the HAP-substituted materials and the materials they replaced shall be made available by Respondent upon EPA's request), all employee training provided, and all equipment purchased and/or installed and each equipment's function and the basis for determining that use of such equipment has increased and/or will increase the efficiency of use of HAP-containing materials; (ii) A description of any operating problems encountered and the solutions thereto; and (iii) Itemized costs of all SEP Components performed and expenditures made. Respondent shall clearly identify and provide acceptable documentation for all Allowable Costs associated with the SEP. Costs incurred not eligible for SEP credit shall be clearly identified as such. "Acceptable documentation" for this Paragraph includes invoices and purchase orders specifically identifying and itemizing individual costs of the goods and services provided. Cancelled drafts are not acceptable documentation unless clearly identifying and itemizing individual costs. Allowable Costs of employee training shall be documented by appropriate invoices and purchase orders for the contractor providing the employee training, and a list of subjects covered and the names of each employee trained and their respective hours spent in training.

c. Initial Compliance Period Report. Within thirty (30) days of the end of the Initial Compliance Period, Respondent shall submit to EPA for approval an Initial Compliance Period Report. The Initial Compliance Period Report shall contain the following information: (i) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; (ii) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the pollutant use and emission reductions, with supporting, and reduction in the annual actual and projected waste sent off site, e.g., for disposal or recycling, including all waste manifests); and (iii) detailed HAP Calculations, calculated as set forth in Appendix B, (with accompanying data necessary to establish the required 12-month rolling average HAP emission rate) demonstrating compliance with the MACT standard during the Initial Compliance Period.

d. Respondent agrees that failure to submit the SEP Completion Report, the Initial Compliance Period Report, or the SEP Interim Progress Report required by Paragraphs 5.a., b., and c., above, and failure to adequately address deficiencies in the reports identified by EPA pursuant to Paragraph 14 of this Consent Agreement shall be deemed a violation of this Consent Agreement and Final Order, and Respondent shall become liable for

stipulated penalties pursuant to Paragraph 15 of the Consent Agreement.

e. All reports required hereunder shall be submitted to Cheryl Turcotte, Technical Enforcement Program, EPA Region 8, at the address provided in Paragraph 9 of the Consent Agreement.

6. Respondent shall continuously use or operate the systems (including use of HAP-substitution materials) installed as the SEP for not less than two (2) years subsequent to the SEP Compliance Date and at no time shall Respondent reinstate the use of any HAP-containing materials replaced or substituted under the SEP; provided, however, Respondent may reinstate use of replaced or substituted HAP-containing materials if such use does not result in (i) any net increase in HAPs released under Respondent's air permit at the Facility; or (ii) if MACT has been achieved, Respondent exceeding the MACT standard. Specifically, Respondent shall not increase the total level of HAP emissions at the Facility achieved by the SEP, demonstrated, and as acknowledged by EPA, at the end of the Initial Compliance Period, for at least two (2) years after the Compliance Date.

7. Example calculation for purposes of Subparagraph 15.a(2) of Consent Agreement.

If Respondent does not achieve the MACT standard through implementation of the SEP by the Compliance Date, as demonstrated at the end of the Initial Compliance Period, but Respondent reduces its HAP use from 4.2 pounds per gallon solid (Current HAP

Use) to 3.24 pounds (End-of-SEP HAP Use), then the "percentage of HAP reduction achieved" is equal to 60.0%, calculated as:

$$\frac{xx - yy}{xx - 2.6} \times 100\% = \frac{4.2 - 3.24}{4.2 - 2.6} \times 100\% = \frac{0.96}{1.6} \times 100\% = 60.0\%.$$

In this example, if Respondent spent \$64,412.50 in Allowable Costs or more on the SEP, the stipulated penalty owed would be:

$$\begin{aligned} & \$64,412.50 - (60.0\% \times \$64,412.50) = \$64,412.50 - \$38,647.50 \\ & = \$25,765.00 \text{ (less stipulated penalties paid under CAFO} \\ & \text{Paragraph 15.a(1))}. \end{aligned}$$

If Respondent spent \$32,206.25 Allowable Costs on the SEP, the stipulated penalty owed would be:

$$\begin{aligned} & \$64,412.50 - (60.0\% \times \$32,206.25) = \$64,412.50 - \$19,323.75 \\ & = \$45,088.75 \text{ (less stipulated penalties paid under CAFO} \\ & \text{Paragraph 15.a(1))}. \end{aligned}$$

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **NEOPLAN USA COPORATION**, **DOCKET NO.: EPCRA-08-2003-0001** was filed with the Regional Hearing Clerk on March 24, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to James Stearns, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on March 24, 2004, to:

Jonathan H. Steeler #9195
Christine L. Hayes #33060
Isaacson, Rosenbaum, Woods and Levy, P.C.
633 17th Street, Suite 2200
Denver, CO 80202

March 24, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON MARCH 24, 2004.